IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.286 OF 2007

Kanaiyalal Lalchand Sachdev — Petitioner
vs.
State of Maharashtra & ors. — Respondents

Ms.Kranti S.S. Anand for the petitioner.

Mr.S.R.Borulkar, PP for respondent 1-State.

Mr.A.G.Damle for respondents 2 & 3.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 7th March 2007

P.C.

We have heard the learned counsel for the petitioner at considerable length. We have also heard the learned Public Prosecutor Mr.S.R.Borulkar and Mr.Damle, the learned counsel appearing for respondent 2 & 3.

2. In this petition, the petitioner has interalia challenged the notice dated 18.11.2006 issued by respondent 2 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (for short, "the said Ordinance"). The case of respondent 2 appears to be that respondent 2 has advanced a loan to the tune of

Rs.4,50,00,000/- to the petitioner and the residential premises with which we are concerned in this petition are one of the securities offered for the said loan. It is the case of respondent 2 that the said amount is not repaid. However the petitioner contends that about Rs.1,72,00,000/- have already been paid. There is a dispute about the exact amount due from the petitioner, but we do not want to go into the said disputed question. The grievance of the petitioner is that on 12.2.2006 respondent 2 with the Officers of the concerned Police Station came to the said premises, broke open the lock, dispossessed the petitioner and his family members. It is the case of the petitioner that the notice issued is illegal and no action could have been taken in pursuance of the said notice and if at all respondent 2 wanted to take any action, he ought to have obtained an appropriate order from the learned Chief Metropolitan Magistrate of the concerned area under Section 14 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the said Act"). She submitted that to the notice issued by respondent 2, the petitioner had submitted reply on 10.1.2007. It appears that the said reply is not accepted by respondent 2, but the reasons for not accepting the said reply have not been communicated to the petitioner as required under Section 13(3-A) of the said Act. In connection with

this submission, the learned counsel for the petitioner has heavily relied on the judgment of the Nagpur Bench of this Court in **M.R.Gawal Enterprises v. Vidarbha Urban Co-operative Bank Limited & anr., 2005(1) Bom.C.R. 276**. The learned counsel for the petitioner submits that the notice be quashed and possession may be ordered to be handed over to the petitioner.

3. Mr.Damle, the learned counsel for respondent 2 states on instructions from Mr.Arun Mahadeo Mahajan, Chief Manager of the 2nd respondent that in the facts and circumstances of the case and without admitting the allegations levelled against respondent 2, respondent 2 wishes to withdraw the notice dated 18.11.2006. Mr.Damle states that the possession of the said premises will be handed over to the petitioner after taking the usual undertakings from the petitioner and the adult members who are staying in the said premises that they shall not alienate, encumber, transfer, dispose of and/or create any third party interest in the said premises for a period of six months from today. The learned counsel for the petitioner states that the following persons including the petitioner stay in the said premises viz. (1) Kanaiyalal Lalchand Sachdev, (2) Mrs.Mamata Kanaiyalal Sachdev, (3) Bhavesh K. Sachdev, (4) Mega K. Sachdev, (5) Khushi K. Sachdev and (6) Bhumi K. Sachdev.

4. Since Mr.Damle has stated that respondent 2 wishes to withdraw the said notice without prejudice to the rights and contentions of respondent 2, in our opinion, it is not necessary to deal with the legal contentions raised by the petitioner which, in our opinion, also involve several disputed questions of facts. Hence the following order:

(i) We record and accept the statement made by Mr.Damle, the learned counsel appearing for respondent 2 that respondent 2 shall withdraw the notice dated 18.11.2006 issued by it within a period of one week from today without prejudice to the rights and contentions of respondent 2.

(ii) We direct the petitioner and every adult member of the petitioner's family who are residing in the said premises viz. T-125, CTS No.1729(p), Off.Choitram Gidwani Road, Gandhi Market, Chembur, Mumbai-74, to file the usual undertakings in this Court stating that they shall not alienate, encumber, transfer, dispose of and/or create any

third party interest in the said premises for a period of six months from today. The said undertakings be filed within a period of one week from today in this Court.

(iii) On such undertakings being filed in this Court, the possession of the said premises will be handed over to the petitioner after following the necessary procedure.

(iv) We make it clear that on the questions involved in this petition, we have not expressed any opinion one way or the other. We keep all contentions of both sides open.

5. With the above directions, the petition stands disposed of.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]